

(SPACE BELOW FOR FILING STAMP ONLY)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK; AND DOES 1 THROUGH
100, INCLUSIVE.

Defendants.

BURBANK POLICE DEPARTMENT; CITY
OF BURBANK,

Cross-Complainants,

-vs-

OMAR RODRIGUEZ, and Individual,

Cross- Defendant.

CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell, Judge
Dept. 37

Complaint Filed: May 28, 2009

PLAINTIFF STEVE KARAGIOSIAN'S POST-
TRIAL BRIEF REGARDING HIS FEHA
COMPLAINT

[Filed concurrently with Plaintiff's Request for
Judicial Notice in Support of Plaintiff Steve
Karagiosian's Post-trial Brief Re: FEHA
Complaint and Declarations of Steve Karagiosian
and Solomon E. Gresen]

TRIAL:

DATE: March 19, 2012

TIME: 10:00 a.m.

DEPT: 37

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 "The law has been obeyed."

4 Cal. Civ. Code § 3548 (one of the Maxims of Jurisprudence, Cal. Civ. Code §§ 3509-3548.)

5 At trial of this matter, defense counsel cross-examined Plaintiff, Steve Karagiosian,
6 concerning the Complaint (the "FEHA Complaint") filed on his behalf with the California
7 Department of Fair Employment and Housing (the "DFEH") (Trial Exhibit No. 158-10 and
8 Karagiosian Deposition Exhibit No. 158-17, which are, respectively, Exhibits A and B to the
9 Declaration of Steve Karagiosian, attached hereto). Mr. Karagiosian testified that he did not recall
10 the FEHA Complaint.

11 Now, in complete disregard of Civ. Code § 3548, establishing a presumption that the law has
12 been obeyed, Defendant seeks to persuade this Court that Plaintiff Karagiosian's FEHA Complaint is
13 invalid. Defendant has no evidence to support the FEHA Complaint's invalidity other than Plaintiff
14 Karagiosian's failure to recall the FEHA Complaint at trial. But his failure to recall is precisely the
15 sort of reason why Civ. Code § 3548 establishes a presumption that the law has been obeyed.
16 Further, Defendant has ignored the indisputable fact that Plaintiff's FEHA Complaint was submitted
17 on-line and the Department of Fair Employment and Housing issued a Right to Sue Letter.

18 Having no evidence that Plaintiff Karagiosian's FEHA Complaint is in fact invalid,
19 Defendant cannot overcome the presumption that the law has been obeyed. Further, the attached
20 declarations of Plaintiff Karagiosian and his lead attorney, Solomon E. Gresen, establish that
21 Plaintiff's FEHA Complaint is in fact valid. Defendant raised the same issue over a year ago, in a
22 motion for summary adjudication as to Plaintiff Cindy Guillen-Gomez (see Exhibit A to Plaintiff's
23 Request for Judicial Notice, filed concurrently herewith). The Court denied that motion (Request for
24 Judicial Notice, Exhibit B). Plaintiff Karagiosian respectfully submits that the Court should once
25 again deny Defendant's effort to dismiss on this ground.

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II. FACTS AND ARGUMENT

On or about May 5, 2009, Plaintiff Steve Karagiosian, met with his attorney, Solomon Gresen, in Mr. Gresen's office and prepared a hand-written Complaint of Discrimination ("FEHA Complaint") on the California Department of Fair Employment and Housing ("DFEH") form. Declaration of Steve Karagiosian, filed concurrently herewith (the "Karagiosian Declaration"), ¶ 4; Declaration of Solomon E. Gresen, filed concurrently herewith (the "Gresen Declaration"), ¶ 2, and Exhibit A to the Gresen Declaration.

When Mr. Karagiosian provided Mr. Gresen with his hand completed-and signed FEHA Complaint, he authorized Mr. Gresen to file a FEHA Complaint on his behalf. He did not know how to file a FEHA Complaint. But he knew that Mr. Gresen knew how to file the FEHA Complaint, and if there was more than one way to file it, Mr. Karagiosian did not care which method of filing Mr. Gresen used. Karagiosian Declaration, ¶ 6. However, Mr. Karagiosian did not want the DFEH to investigate his FEHA Complaint. Instead, he wanted to receive an immediate right to sue letter from the DFEH, so that he and the other plaintiffs could promptly file suit to commence the instant action. (Gresen Declaration, ¶ 3) Therefore, Mr. Gresen did not submit Mr. Karagiosian's hand-written FEHA Complaint to the Department of Fair Employment and Housing. (Gresen Declaration, ¶ 3.)

Individuals, such as Mr. Karagiosian, who wanted to obtain an immediate right to sue letter from the DFEH were able to do so by submitting their Complaint of Discrimination on-line. Complaints filed electronically need not be signed. 2 CCR § 1002(a)(9). See, also, 2 CCR § 1002(a)(8), requiring the signature of the complainant or an authorized representative, "unless the complaint is filed electronically."

At that time, on-line FEHA complaints were submitted at <http://www.dfeh.ca.gov/onlinerts/> – which was a page on the DFEH website. On that page, there was a small picture, or icon, which is labeled "New RTS." Gresen Declaration, ¶ 4.¹ The instructions on that web page state, in part, "If you have decided to request a 'right-to-sue notice' at this time, click on 'New RTS' below and follow the instructions." Mr. Gresen followed those instructions, using Mr. Karagiosian May 5, 2009, hand-completed and signed FEHA Complaint. Gresen Declaration, ¶ 4.

¹It appears that the DFEH has recently made changes to its website. Now the web page is: <http://applications.dfeh.ca.gov/onlinerts/>. Gresen Declaration, ¶ 4.

1 After going through the on-line process for completing the FEHA Complaint form, the on-
2 line process ends by clicking on a button to submit the FEHA complaint to the DFEH. Gresen
3 Declaration, ¶ 5. The instructions on that page include a verification statement like the one Mr.
4 Karagiosian signed on his hand-completed FEHA Complaint, stating that by submitting the
5 complaint the person is declaring under penalty of perjury under the laws of the state of California
6 that everything in the FEHA complaint is true of the person's own knowledge except as to matters
7 stated on information and belief, and as to those matters the person believes them to be true. Gresen
8 Declaration, ¶ 5.²

9 When Mr. Karagiosian's attorney was done inputting Mr. Karagiosian's information, he then
10 clicked the button to submit Mr. Karagiosian's FEHA Complaint. Gresen Declaration, ¶ 7.

11 After completing the on-line submission of a FEHA complaint, one has to follow additional
12 instructions and take additional steps to see and print the completed FEHA complaint and the right to
13 sue letter. When Mr. Gresen took those steps, Mr. Karagiosian was not in Mr. Gresen's office.
14 Therefore, Mr. Karagiosian did not see his completed FEHA Complaint in the form in which it was
15 attached to his complaint. Gresen Declaration, ¶ 8. A true and correct copy of that FEHA Complaint
16 is Trial Exhibit No. 158-10, and Exhibit C to the Gresen Declaration. Gresen Declaration, ¶ 8.

17 Mr. Karagiosian's hand-written FEHA Complaint (Gresen Declaration, Exhibit A) lists
18 several individuals, while his FEHA Complaint (Gresen Declaration, Exhibit C) that was submitted
19 on-line does not. That is because the system instead created individual complaints for each of those
20 individuals. Also, Mr. Karagiosian checked off a line indicating he had suffered retaliation, while
21 Mr. Gresen typed "retaliation" onto the "other" line on the form. However, Mr. Karagiosian's hand-
22 written and signed FEHA Complaint and the one submitted on-line on his behalf are substantively
23 identical. Gresen Declaration, ¶ 9.

24 The complaint in this lawsuit was filed on May 28, 2009, the day after the DFEH issued Mr.
25 Karagiosian's right to sue letter. Gresen Declaration, ¶ 10.

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28 ²A true and correct copy of the page that one sees immediately prior to submitting a FEHA
complaint on-line is Exhibit B to the Gresen Declaration. Exhibit B was printed from the DFEH website
on March 7, 2011, and attached as an exhibit to Mr. Gresen's declaration that was filed on March 8,
2011, as part of the successful opposition of Plaintiff Cindy Guillen-Gomez to Defendant's motion for
summary adjudication of this same issue in her case. Gresen Declaration, ¶ 6.

1 Thus, contrary to Defendant's argument, Plaintiff's FEHA Complaint was properly verified
2 and Plaintiff did exhaust his administrative remedies. If Defendant's argument – that Plaintiff's
3 FEHA complaint was not properly verified because Plaintiff did not see the final form before
4 verifying it – were correct, then no FEHA complaint filed on line is properly verified because
5 no one sees the final form of the complaint until after the information is verified and submitted.

6 Even if one assumes, for the sake of argument, that the facts discussed above do not
7 constitute verification of the FEHA Complaint by Plaintiff, then they constitute verification by
8 Plaintiff's counsel. An attorney may verify a FEHA complaint on behalf of his client. (*Blum v.*
9 *Superior Court* (2006) 141 Cal.App.4th 418.)

10 *Greenly v. Sara Lee Corp.*, 2008 U.S. Dist. LEXIS 35472 (E.D. Cal. Apr. 29, 2008), relied
11 upon by Defendant, does not alter this result. In *Greenly*, the court held that, although an attorney
12 may verify a FEHA complaint on behalf of his client by signing his own name, he may not do so by
13 signing his client's name. *Greenly* is distinguishable from the case at bar in that it involved a printed
14 FEHA complaint form that had a space for a signature in connection with the verifying language. In
15 contrast, in the case at bar, the FEHA Complaint was filed on-line, and there was no space for a
16 signature. Thus the issue in *Greenly* of whether the attorney may sign the client's name or must sign
17 his own name, is not an issue herein because there was no space for any signature.


18 Thus, the FEHA Complaint herein was properly verified. It follows that Plaintiff properly
19 exhausted his administrative remedies. Defendants motion for summary adjudication should thus be
20 denied in its entirety.

21 IV. CONCLUSION

22 For all the foregoing reasons, Plaintiff respectfully submits that Defendant's request for
23 judgment as to each of Plaintiff Steve Karagiosian's remaining claims should be denied in its
24 entirety.

25 DATED: April 6, 2012

LAW OFFICES OF RHEUBAN & GRESEN

26
27 By: 
28 Robert C. Hayden
Attorneys for Plaintiff, Steve Karagiosian

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I am over the age of eighteen and am not a
4 party to the within action. My business address is 15910 Ventura Boulevard, Suite 1610, Encino,
California 91436.

5 On April 6, 2012, I served a copy of the following documents described as: **PLAINTIFF**
6 **STEVE KARAGIOSIAN'S POST-TRIAL BRIEF REGARDING HIS FEHA COMPLAINT**
on the interested parties, through their respective attorneys of record in this action by placing a true
7 copy thereof enclosed in sealed envelopes addressed as follows:

8 Linda Miller Savitt, Esq.
9 Ballard Rosenberg Golper &
Savitt, LLP
10 500 North Brand Boulevard,
Twentieth Floor
Glendale, California 91203
11 Email: lsavitt@brgslaw.com

12 **XX BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as
13 above, and placing each for collection and mailing on that date following ordinary business
14 practices. I am "readily familiar" with this business's practice for collecting and processing
correspondence for mailing. On the same day that correspondence is placed for collection
and mailing, it is deposited in the ordinary course of business with the U.S. mail Postal
Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

15 **XX BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
16 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
documents to be sent to the person(s) at the e-mail address listed above. My electronic
17 notification address is ag@rglawyers.com. I did not receive, within a reasonable time after
the transmission, any electronic message or other indication that the transmission was
18 unsuccessful.

19 **XX STATE:** I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

20 Executed on April 6, 2012, at Encino, California.

21 
22 Annette Goldstein

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1301 West Second Street #205, Los Angeles, California 90026.

On April 6, 2012, I caused the foregoing documents described as **PLAINTIFF STEVE KARAGIOSIAN'S POST-TRIAL BRIEF REGARDING HIS FEHA COMPLAINT** to be personally served by delivering a true copy thereof enclosed in a sealed envelope addressed as follows:

Lawrence A. Michaels
Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
Facsimile: (310) 312-3100
Email: LAM@msk.com

☒ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the premises of the addressee.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the declaration was executed on April 6, 2012, at Encino, California.

Print _____